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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 337

RAILWAY LABOR EXECUTIVES ASSOCIATION, APPELLANT

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

N APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES

This proceeding was brought by appellant to set side part of an order of the Interstate Commerce Commission. As required by statute,[1] the United States was named as a defendant. The case is here on appeal from the judgment of the district court dismissing appellant's complaint, and the United States is a nominal appellee. Since the United States is of the view, however, that the order of

[1] See Section 2322 of Title 28, United States Code.

the Interstate Commerce Commission interpreting Section 5 (2) (f) of the Interstate Commerce Act is incorrect, this brief sets forth the grounds upon which it is submitted that the judgment of the district court is erroneous and should be reversed. See *Mitchell* v. *United States,* 313 U. S. 80, 92; *Interstate Commerce Commission* v. *Mechling,* 330 U. S. 567, 574, note 6.

STATUTE INVOLVED

Section 5 (2) (f) of the Interstate Commerce Act, as amended (54 Stat. 906, 49 U.S.C. 5 (2) (f)) provides:

> As a condition of its approval, under this paragraph (2), of any transaction involving a carrier or carriers by railroad subject to the provisions of this part, the Commission shall require a fair and equitable arrangement to protect the interest of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such

employee was in the employ of such carrier or carriers prior to the effective date of such order.[2]

STATEMENT

In connection with construction of a new passenger terminal at New Orleans, the Interstate Commerce Commission authorized the consolidation and abandonment of certain railroad lines (R. 10), the order to "take effect" on May 17, 1948 (R. 43). Construction was to begin by December 31, 1949, and the project was to be completed by December 31, 1954 (R. 51). Approximately 1022 employees would be disadvantaged by the consolidation, of which some 350 would lose their jobs (R. 27). It was not possible to specify which employees would be those adversely affected, for most of the personnel changes would not occur until the project was completed in 1954 (R. 27, 28, 29, 30).

Pursuant to Section 5 (2) (f), the Commission included in its order provisions for the protection of employees adversely affected. In summary these consisted of compensation for any diminution of salary after displacement, including payment of full former salary if unemployed, reimbursement of moving costs, loss on sale of home or lease cancellation, and certain other benefits. The

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[2] The section contains a further sentence, not here material, safeguarding the right of railroads and their employees to enter into agreements related to protection of the interests of railroad employees.

Commission limited these benefits for employees to a period of four years from the "effective date of our order approving" the consolidation, for the reason that, under Section 5 (2) (f), "we have no authority to prescribe any other period" (R. 32).

Since this grant of benefits terminates on May 17, 1952, the practical effect of the order is that the great majority of the employees adversely affected by the consolidation get no benefits whatever.

QUESTION PRESENTED

The question thus raised is whether the second sentence of Section 5 (2) (f) imposes an absolute limitation upon the authority of the Commission to grant protective benefits to employees adversely affected by a consolidation of railroads to a period of four years from the effective date of the Commission's order, even though most of the employees will not begin to be adversely affected until the completion of the consolidation six years after the Commission's order. We do not believe that the statute need be given such an absurd interpretation.

ARGUMENT

Prior to the enactment of the present Section 5 (2) (f), *United States* v. *Lowden*, 308 U. S. 225, held that the Commission had discretionary authority to require benefits for employees disadvantaged by a consolidation for periods up to five years from the date of loss of employment, under a statute authorizing approval of consolidations on such condi-

tions as the Commission found to be "just and reasonable." In *Interstate Commerce Commission* v. *Railway Labor Executives Association,* 315 U. S. 373, this Court stated that the present Section 5 (2) (f) "merely make mandatory with respect to unifications the protection for workers that had previously been discretionary." (315 U. S. 379.) That case ruled that the Commission had such discretionary authority to grant employees benefits as a condition of abandonment of a railroad line under Sections 1 (18)-(20), providing for approval of abandonments under "such terms and conditions as in its judgment the public convenience and necessity may require."

The purpose of Section 5 (2) (f) was to make mandatory the previous discretionary duty of the Commission to protect employees in cases of railroad consolidation. The Commission's decision gives employees in cases in which the consolidation will take four years to complete less protection than they would have received under the general and non-mandatory language of the prior statute or under the present abandonment provision. Only very explicit language would justify a construction leading to such an anomalous result, and there is no such language here.

The crucial question in this case is whether the phrase "four years from the effective date of such [the Commission's] order" deprives the Commis-

sion of power to accord any protection to employees when the Commission approves a consolidation plan in which it will take over four years to construct the new facilities.[3]

Both the face of the statute and its history (discussed, *infra,* pp. 9-17, and in appellant's brief, pp. 28-54) make it clear that the object of Congress was to protect the railroad employees displaced by a consolidation. They also show that the sentence containing the four-years clause was added so as to provide additional protection, that the prior sentence giving to the Commission authority to fashion a discretionary remedy was not regarded as sufficient. In these circumstances, even if the language of the statute were plainer than it is when read as a whole, it would be appropriate for the Court so to construe the Act as to avoid an "absurd" result "plainly at variance with the policy of the legislation as a whole." *United States* v. *American Trucking Associations,* 310 U. S. 534, 543, and cases cited.

We believe, however, that there are two sound means of avoiding the unreasonable interpreta-

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[3] The opportunity to find another job during four years before completion of the new project could hardly be the type of protection Congress contemplated, for this would require the premature departure of employees who would still be needed to operate the old facilities. Moreover, since the employees would not know with certainty which 340 out of the 1022 would be displaced, many more than 340 might leave if the period of "protection" terminated before the displacement.

tion of the statute which the Commission felt was compelled by the literal language.

The first is to give the first sentence of Section 5 (2) (f), which gives the Commission general authority to "require a fair and equitable arrangement to protect the interest of the railroad employees affected," its full scope and literal meaning, and not to construe the second sentence containing the four-year clause as narrowing the authority of the Commission under the first sentence. This interpretation not only comports with the literal language of the Act, but is supported by the legislative history, which shows that the second sentence was designed to give employees more, not less, protection than the first.

The second approach is to construe the phrase "four years from the effective date of such order" as meaning four years from the date on which the order affects an individual employee. This interpretation, although a slight departure from the literal meaning of the words of the statute, is narrower than that suggested above, since it would limit the Commission's authority to the period specified in the second sentence—a lesser period than that which this Court sustained in the *Lowden* case. We will discuss the second of the suggested interpretations first.

1. When Congress used the phrase "four years from the effective date of such order" it unquestionably did not have in mind the present type of

situation, in which the construction of a consolidated facility would take so long that the employees would not be displaced until after four years from the effective date of the Commission's order. That Congress assumed that "four years from the effective date of the order" and "four years after the consolidation" were synonymous, appears from the use of the expressions in two consecutive paragraphs of the conference report, quoted *infra*, pp. 13-14. Clearly Congress meant that each displaced employee should receive the benefit of the four-year period of protection—without regard for the length of time necessary to construct the consolidated facility which would bring about the displacement. The failure of Congress to anticipate the present contingency, and thus to use language which adequately dealt with it, does not prevent the Court from giving the words of the four-year clause the meaning which Congress obviously intended them to have. Since Congress thought that the clause was giving each displaced employee four years' protection, the second sentence can reasonably be construed as meaning that the employee shall not be "in a worse position" during the period of four years from the date on which the order affects him.

2. The Commission has authority to grant the employees effective relief under the first sentence of Section 5 (2) (f). There is no reason to construe the second sentence as superseding and largely

nullifying the literal meaning of the first.[3a] The first sentence of Section 5 (2) (f) provides:

> As a condition of its approval, under this paragraph (2), of any transaction involving a carrier or carriers by railroad subject to the provisions of this part, the Commission shall require a fair and equitable arrangement to protect the interest of the railroad employees affected.

This provision makes mandatory "fair and equitable" measures to protect the employees and grants the Commission discretion as to the nature and extent of the relief. The second sentence was not meant to narrow the scope of the first. This is shown not only by the history of the section, discussed below, but by the reference in the "except" clause of the second sentence to "the protection afforded to any employee pursuant to this *sentence*", not this subsection or paragraph.

This interpretation of Section 5(2)(f) is supported by its history. In 1936 the "Washington Agreement" was entered into between 85% of the railroads in the United States and labor organizations representing approximately 92% of railway

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[3a] It is unnecessary to decide in this case whether the intention manifested in the second sentence would prevent the Commission from giving any employee protection for more than four years from the time he was adversely affected. The Commission might properly take this factor into account if the Court holds that it does not lack power to protect beyond four years from the effective date of its order.

labor.[4] This agreement provided protection for employees affected by consolidation or merger of railroads. Under the agreement, employees who continued in the employment of the railroads were guaranteed that they would be in no worse position with respect to compensation and working conditions for a period not exceeding five years; employees whose employment was terminated were entitled to receive 60% of previous compensation for varying periods of from six months to five years, based upon the length of previous employment, and amounting roughly to something less than half the period of previous employment. Employees also received moving costs, loss on sale of home and lease cancellation, and certain other benefits. Significantly, these benefits ran from the date the employee was adversely affected.

By 1938 the Commission had ruled that, under the existing statute, it had discretionary authority to require benefits, substantially similar to those set forth in the "Washington Agreement", to be granted to employees affected by consolidation, *Chicago, Rock Island & Gulf Railway Co. Trustees Lease,* 230 I. C. C. 181, 187, 188, approved by the full Commission, 233 I. C. C. 21, affirmed by this Court in 1939, *United States* v. *Lowden, supra.*

When, in 1938, the President appointed a Committee of Six, composed of railroad management

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[4] Hearings before the Committee on Interstate and Foreign Commerce on H. R. 2531, House of Representatives, 76th Cong., 1st Sess., pp. 231, 241.

and labor, to make recommendations with respect to improving transportation, the precedent was well established of protecting railway personnel who were displaced by consolidations. Included in the report of this Committee was the recommendation that, in connection with consolidations and mergers, there should be a requirement of a "fair and equitable arrangement to protect the interests of the * * * employees."[5] This was, in substance, the source of the first sentence of Section 5(2)(f).

In 1939 bills were introduced in both Houses containing this requirement.[6] There was testimony at the hearing that it was understood that the effect of the provision would be to empower the Interstate Commerce Commission to continue the current practice of requiring employee protection at least to the extent of the "Washington Agreement."[7] The bill was passed by the Senate,[8] and the bill reported by the House Committee on Interstate and Foreign Commerce contained the same provision.[9] But on the floor of the House, Congressman Harrington offered an amendment to that section providing that no consolidation

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[5] Hearings before the Committee on Interstate and Foreign Commerce, House of Representatives, 76th Cong., 1st Sess., on H. R. 2531, p. 275.

[6] S. 2009, H. R. 4862, 76th Cong., 1st Sess.

[7] Hearings before the Committee on Interstate Commerce, Senate, 76th Cong., 1st Sess. on S. 1310, S. 2016, S. 1869, and S. 2009, p. 34; House Hearings, *supra*, pp. 193, 194, 243, 244.

[8] 84 Cong. Rec. 6158.

[9] H. Rep. No. 1217, 76th Cong., 1st Sess., p. 12.

shall be approved by the Commission if it "will result in unemployment or displacement of employees * * * or in the impairment of existing employment rights of said employees."[10] The effect of the Harrington amendment would have been to freeze employees in their jobs indefinitely as a result of railroad consolidations. The amendment was intended to give the employees more protection than was afforded by the "fair and equitable" clause previously introduced. It was supported by the Brotherhood of Railway Trainmen[11] and opposed by the majority of railway labor.[12]

The Harrington amendment was passed and the bill sent to a conference committee. That committee resolved the conflicting views by leaving out the consolidation section of the statute entirely which, in effect, would have preserved the status quo.[13] Nonetheless, when the bill was returned to the house, Congressman Harrington and others urged that the bill be recommitted with instructions to include the substance of his previous amendment. He argued that railway labor "should have further protection".[14] Congressman Sparkman favored recommitment on the ground that "as between the measure passed by the Senate and the Harrington amendment in the

[10] 84 Cong. Rec. 9881, 9882.
[11] 84 Cong. Rec. 9883, 9884, 9886.
[12] 84 Cong. Rec. 9889, 86 Cong. Rec. 5880.
[13] H. Rep. No. 2016, 76th Cong., 3d Sess.
[14] 86 Cong. Rec. 5869.

House, some workable plan could have been provided."[15] The bill was sent back to conference with instructions to insist upon a revised subsection (f).[16] The first sentence of the proposed House draft was, so far as material, the same as the first sentence of Section 5(2)(f) as enacted. The second sentence provided that the Commission's order should include conditions that the consolidation will not result in employees "being in a worse position with respect to their employment."

The conference committee, this time, reported the bill in the form in which it was passed. The conferees had retained the second sentence as instructed, but added to it the four year time limitations.

In explaining the bill, the Conference Report states (H. Rep. No. 2832, 76th Cong., 3d Sess., pp. 68-69):

> The substitute proposal for the Harrington amendment, as recommended to the conferees by instruction of the House, provided in substance that in case of consolidations and other unifications involving carriers by railroads, the Commission should in its order of approval require fair and equitable arrangements to protect the interests of the railroad employees affected. This provision has been retained in the substitute agreement agreed upon in conference.
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> * * * * *

[15] 86 Cong. Rec. 5883.
[16] 86 Cong. Rec. 5886.

The conference agreement on the Harrington amendment includes a provision of the instruction which provides that the order of approval shall include terms and conditions providing that the transaction shall not result in the employees being in a worse position with respect to their employment. The conference agreement, however, qualifies this provision by confining its operation to a period of *four years from the effective date of the order* approving the transaction and providing further that the protection afforded to an employee shall not be required to continue for a longer period following the effective date of the order than the period for which such employee was in the employ of an affected carrier prior to the effective date of the order.

In other words, the Harrington amendment made all employees of the affected carriers equal beneficiaries of its provisions regardless of the length of time they may have been employed prior to a consolidation. It also required the carrier to maintain the benefits of its provisions indefinitely and without any specified limitation by time or otherwise. Under the terms of the conference agreement the benefits to employees will be required to be paid for *not longer than four years after the consolidation,* and in no case for longer than the service of the employee for the affected carriers prior to the effective date of the order authorizing the consolidation. [Italics supplied.]

The report thus indicates that the time limitation was upon the duration of the mandatory requirements of the second sentence of 5 (2) (f)—a qualification upon the provision that the employees shall not be placed in a worse position with respect to their employment. In particular, after quoting the statutory language, the report paraphrases it to state that benefits will be required to be paid for not more than "four years after the consolidation"—an interpretation that places no absolute limit on the Commission and provides benefits from a date when the consolidation has in fact been accomplished.

The bill as reported was explained on the floor of the House. Although the general purpose was clear, there was no reference to the present problem. Various expressions bearing upon the point indirectly are susceptible of construction as supporting both appellant's and the Commission's interpretation of the statute. On the whole, however, it appears that those Congressmen most responsible for the bill did not regard the second sentence as limiting the first. In reporting the bill to the House, Congressman Lea, Chairman of the Conference Committee, stated (86 Cong. Rec. 10178):

> The next amendment concerning which the House instructed us was known as the Harrington amendment. There were certain things involved in the instructions as to this amendment to which I want to call your attention.

> The first was that the Interstate Commerce Commission should make fair and equitable provisions for employees affected adversely by reason of consolidations or unifications. We had a provision in the original bill that came to the House to that effect and the amendment that we have agreed upon embodies that same provision.
>
> * * * * *
>
> There was a further provision—the instruction as to the Harrington amendment—that the agreement should include conditions so that the transaction will not result in employees being placed in a worse condition with respect to their employment. That provision is written in the conference agreement.

This statement recognizes the independent origin of the two sentences. In discussing the four-year period added by the Committee, Congressman Lea talks in terms of a limitation upon the requirement of the second sentence, not in terms of a limitation upon the power of the Commission.

> The substitute that we bring in here provides two additional things. First, there is a limitation on the operation of the Harrington amendment for four years from the effective date of the order of the Commission approving the consolidation. In other words, the employees have the protection against unemployment for four years, but the Commission is not required to give them benefits for any longer periods. * * * [86 Cong. Rec. 10178].

And there is clear indication that it was not intended to place railway labor in a worse position than it had been prior to the enactment of this statute.

> We take nothing from labor by this agreement. We simply write specific provisions that shall be in the order of approval of the Commission, but otherwise we do not tie its hands. [*Ibid.*]

On the other hand, under questioning, Mr. Lea describes the effect of the four-year period in less elastic terms.

> Mr. VORYS of Ohio. Would this four-year rule have the effect of delaying a consolidation for four years, or would it mean that if a consolidation were made there would still be a four-year period during which the man would be paid?
>
> Mr. LEA. No; this rule does not delay consolidation. It means from the effective date of the order of the Commission the benefits are available for four years. The order determines the date, and the protective benefits run four years from that date.
>
> Mr. VORYS of Ohio. That would be whether or not they were still employed?
>
> Mr. LEA. Yes. [*Ibid.*]

But throughout the debate, there is no real dispute that the basic purpose of the statute was to afford realistic and practical protection to railroad

employees who would suffer as a result of this type of transaction.

> Mr. O'CONNOR. As I want to see those who might lose their jobs as a result of consolidation protected, I should like to have the gentleman's interpretation of the phrase that the employee will not be placed in a worse position with respect to his employment. Does "worse position" as used mean that his compensation will be just the same for a period of four years, assuming that he were employed for four years, as it would if no consolidation were effected?
>
> Mr. LEA. I take that to be the correct interpretation of those words. Our conference agreement followed the instructions of the House in that respect. It gives railway labor generous protection against sudden and long unemployment. [*Ibid.*]

While there may be some room for conflicting interpretations of the debate, it is our view that any ambiguity results largely from inexactness of phrasing in oral discussion by speakers who did not have the present problem in mind, and does not reflect a real dispute as to the basic purposes intended to be furthered by the legislation. The key factor underlying enactment of the section was that the first sentence originated in the recommendations of the Committee of Six, and the second sentence stemmed from the Harrington amendment. Both provisions were intended to benefit railway labor; both provisions were supported by different factions of railway labor; and it was never suggested

that either was intended to place any employees in a worse position than they would have been had no amendment at all been passed.[17] While the practice of the Commission, as exemplified by *Chicago, Rock Island & Gulf Railway Co. Trustees Lease*, 230 I. C. C. 181, approved, 233 I. C. C. 21, did not insure benefits to employees in every instance as large as those under the present Section 5 (2) (f), it granted benefits which accrued when the employee was adversely affected. The instant decision of the Commission grants no benefits whatever to bridge the gap which follows unemployment or adversity.

We submit that the "scope and function" of Section 5 (2) (f) would be effectuated more consistently, in the light of "the history of events" which it summarizes (*Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177, 185-186, 190-191), if the first sentence is treated as independent of the second, and if the phrase "effective date of such order" is interpreted as the date upon which the employee is adversely affected by the approved consolidation. This would establish a date from which benefits would run in conformity with the former statute and practice of the Commission, and would have the practical result clearly intended by Congress for a group otherwise deprived completely of the protection afforded to employees suffering as a result of the consolidation or abandonment of railroad lines.

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[17] Cf. remarks of Congressman Wolverton, a member of the Conference Committee, 86 Cong. Rec. 10189.

For these reasons, the judgment below should be reversed.

Respectfully submitted.

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